

Legislative Report  
January 2017

# **The State of Idaho's Public Defense System**

**Idaho State Public Defense  
Commission**



*"The price of freedom is eternal vigilance."*

# Idaho State Public Defense Commission

## 2016 Executive Summary

In 2016, the State Public Defense Commission (PDC) continued its mission to improve the delivery of trial-level indigent defense in Idaho as directed by the legislature. This year saw the Commission hire a new Executive Director and begin work under new legislation that went into effect on July 1. This report highlights the activities and accomplishments of the Commission throughout the year, as well as its priorities as it moves forward, as follows:

- **Training for Defending Attorneys** - The PDC sponsored five different training programs. Additionally, the PDC offered scholarships for defending attorneys to attend nationally recognized trainings. The PDC plans to sponsor at least four training programs in the upcoming calendar year.
- **Collaborating with Idaho's Counties** - The PDC met with representatives from almost all of Idaho's counties in an effort to educate stakeholders on the new legislation and receive feedback on the status of their indigent defense systems. The PDC is committed to building collaborative, effective working relationships with Idaho's counties.
- **Submission of Pending Rule** - This year the PDC submitted its first administrative rule related to standards for defending attorneys. These standards require, when reasonably practicable, representation at a defendant's first appearance, assignment of the same attorney throughout a defendant's case, and require annual continued legal education for defending attorneys. The germane committees will review these rules during this legislative session.
- **Inaugural Indigent Defense Grants** - For the first time, the PDC distributed over \$3.9 million of state funds to 43 of Idaho's 44 counties to augment the cost of providing indigent defense. The counties have a variety of plans for the use of their grants to improve their delivery of public defense services.
- **Workload study and the collection of data** - The PDC plans on conducting a workload study in 2017 to collect data on the workload of Idaho's defending attorneys. This data will be used as a basis for PDC rulemaking in the future.
- **Going Forward** - The PDC will continue in its efforts to educate stakeholders and defending attorneys about the issues facing Idaho's indigent defense delivery system. It will also continue to meet its legislative directive to create administrative rules furthering Idaho's Principles of an Indigent Defense Delivery System. Finally, the PDC will develop procedures for distributing funds for "extraordinary litigation costs."

The foregoing represents a fraction of what the PDC has done and will do over the coming year. The Commission encourages you to review the full report contained herein and looks forward to any questions, comments or feedback about this report or the Commission's work more generally.

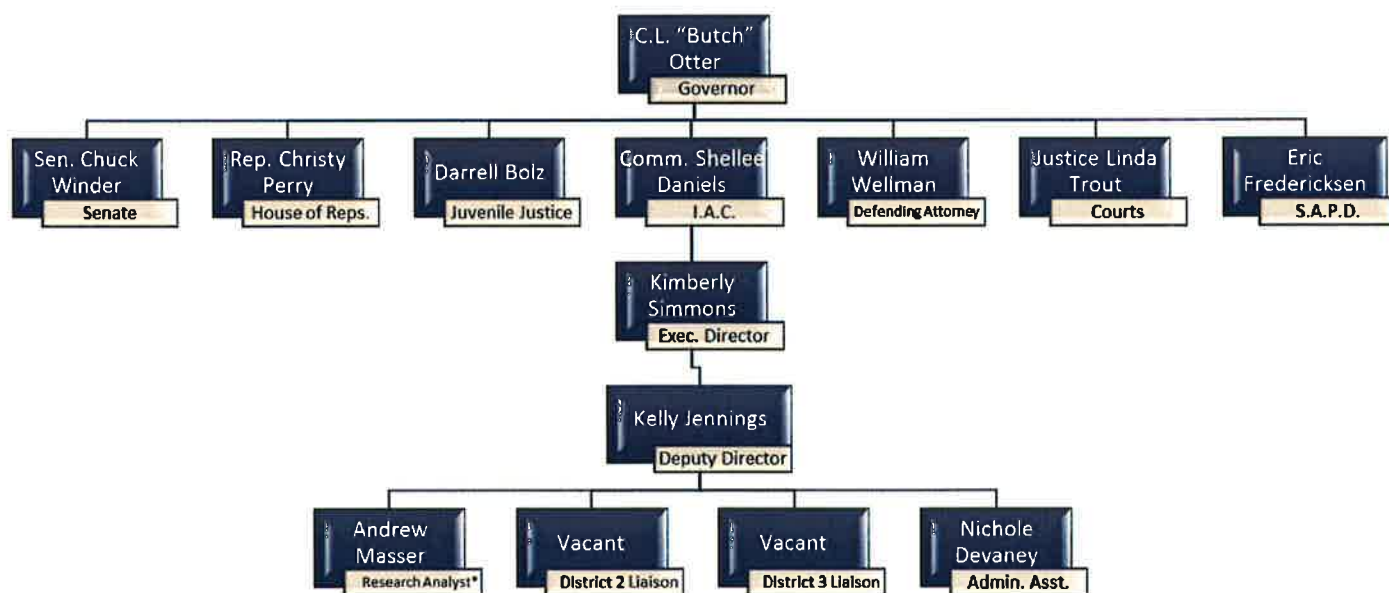
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Created in 2014, the Idaho State Public Defense Commission (PDC) operates under the authority of Idaho Code §§19-848 through 19-864. Its mission is to improve the delivery of trial-level indigent defense services by serving the counties and indigent defense providers of Idaho. The PDC strives to ensure that the safeguards of the 6th Amendment to the United States Constitution and Article I, Sect. 13 of the Idaho Constitution are met. The PDC collects data, supports compliance with standards, provides training, and administers grants to achieve fair and just representation of the accused.

Pursuant to Idaho Code §19-859, each of Idaho's 44 counties shall provide for the representation of indigent persons by either establishing an office of public defender or contracting with an attorney or law firm to provide such services. At the end of 2016, twelve of Idaho's counties had elected to establish an office, while the remaining 32 counties provide contracted indigent defense services. Historically, the counties have funded indigent defense services. In 2016, the PDC was given the authority to distribute state monies to aid the counties in providing constitutionally-sound representation to their indigent citizens.

## Idaho State Public Defense Commission Organizational Chart 2016-2017



\*The Research Analyst is a temporary position from October 2016-April 2017, with an optional extension through June 2017.

## From the Executive Director

January 20, 2017




This report showcases the composition, achievements and activities of the State Public Defense Commission (PDC) in 2016. The PDC, established in 2014, had been working on fulfilling their original responsibilities of promulgating rules related to the training and continuing legal education requirements for defending attorneys and uniform data reporting requirements for annual reports submitted pursuant to Idaho Code §19-864. During the 2016 legislative session, House Bill 504, Relating to Public Defense, was introduced by the Public Defense Reform Interim Committee. This bill exponentially increased the powers and responsibilities of the Commission to promulgate rules regarding: procedures for the creation, oversight, implementation, enforcement, and modification of indigent defense standards; requirements for contracts between counties and private attorneys for the provision of indigent defense services; data reporting requirements; procedures for grant applications by which counties can apply for state funds to offset the cost of compliance with indigent defense standards; and procedures for administrative review of Commission decisions. The bill passed and was signed by the Governor on March 24, 2016.

During the 2016 legislative session, the PDC provided input regarding House Bill 504, and since the passage of the bill, the PDC has worked diligently to fulfill the legislature's directives. In 2016, the PDC: distributed the very first round of Indigent Defense Grants to the counties to help the counties improve their indigent defense delivery systems; finalized a temporary rule regarding the use of appropriated funds for training programs; promulgated a rule regarding Standards for Defending Attorneys that, at the time of this report, is awaiting legislative review; hosted and co-sponsored several trainings for defending attorneys; collaborated with stakeholders on how to best improve indigent defense in Idaho; created a uniform annual reporting form for defending attorneys; and maintained communication with stakeholders and other interested parties through face-to-face meetings, the PDC website, e-mail, and social media.

The PDC is committed to fulfilling its statutory directives and assisting counties to provide effective and fair representation to Idaho's indigent citizens. The PDC will continue to establish effective working relationships with in-state stakeholders as well as nationally recognized experts in the area of indigent defense. Staff will research new approaches and methods to improve the indigent defense delivery system, and share Idaho's experiences so others can find new and innovative ways to improve the quality of indigent representation in their jurisdictions. Idaho has a unique opportunity to be a leader in indigent defense reform and the PDC will embrace this challenge with passion and diligence.

Sincerely,

  
Kimberly Simmons



**Idaho Code §19-849  
State Public Defense Commission**

(1) There is hereby created in the department of self-governing agencies the state public defense commission. The commission shall consist of seven (7) members as follows:

(a) Two (2) representatives from the state legislature that shall include one (1) member from the senate and one (1) member from the house of representatives;

(b) One (1) representative appointed by the chief justice of the Idaho supreme court; and

(c) Four (4) representatives appointed by the governor and confirmed by the senate as follows:

(i) One (1) representative from the Idaho association of counties;

(ii) One (1) representative who has experience as a defending attorney;

(iii) One (1) representative from the office of the state appellate public defender; and

(iv) One (1) representative from the Idaho juvenile justice commission.

(2) No individual who is currently employed as a prosecuting attorney or who is a current employee of a law enforcement agency may be a member of the commission.

(3) The members of the commission shall serve the following terms:

(a) The gubernatorial appointees shall serve terms of three (3) years.

(b) The representative appointed by the chief justice of the Idaho supreme court shall serve a term of two (2) years.

(c) The representatives from the state legislature shall serve terms of two (2) years as appointed by the president pro tempore of the senate and speaker of the house of representatives during their legislative terms of office.

(4) A vacancy on the commission shall be filled in the same manner as the original appointment and for the balance of the unexpired term.

(5) The commission shall appoint a chairman and a vice chairman from among its members for a term certain.

(6) The members of the commission shall be compensated as provided for in section 59-509(b), Idaho Code.

## 2016 Commission Members

### Representative Darrell Bolz (Retired), Chair

*Represents the Idaho Juvenile Justice Commission, appointed by the Governor (Term: July 2014 – June 2017)*

Mr. Bolz is a retired Idaho State Representative who served seven terms representing District 10. While in the legislature he served on the following committees: Joint Finance and Appropriations (JFAC), Judiciary, Rules & Administration, and Agricultural Affairs, with brief terms on Education and Commerce & Human Resources. He also served for three years on the Idaho Criminal Justice Commission's sub-committee on Public Defense Reform and was a Co-Chair of the Legislative Public Defense Interim Committee for two years. Prior to serving in the Legislature, Mr. Bolz was an Extension Agricultural Agent for the University of Idaho. He is a graduate of the University of Idaho with both bachelor's and master's degrees in Agricultural Education. He received a commission in the U.S. Naval Reserve through the Navy R.O.T.C. and served three years of active duty during the Vietnam War.

### Representative Christy Perry, Vice Chair, Idaho House of Representatives

*Represents the Idaho House of Representative, appointed by the Speaker of the House of Representatives (Term: January 2015 – November 2016)*

Representative Perry is currently serving her fourth term as an Idaho State Representative for District 11, representing a large portion of Canyon County. She is active on the Health and Welfare and Judiciary, Rules & Administration committees, while chairing the Local Government committee. Ms. Perry served on the Public Defense Interim Committee when it developed House Bill 504, expanding the Commission's authority. She is a Top Ten Scholar Finalist and Distinguished Honors Award recipient at Boise State University and a businesswoman. Ms. Perry earned her bachelor's degree in Political Science and Master of Public Administration degree from Boise State University.

### Eric D. Fredericksen, Esq., State Appellate Public Defender

*Represents the Office of the State Appellate Public Defender, appointed by the Governor (Term: July 2016 – June 2017)*

Mr. Fredericksen serves as the State Appellate Public Defender. He joined the office as a staff attorney, later becoming a senior attorney, before leaving for a short stint at a private law firm. Mr. Fredericksen handled all levels of criminal and civil litigation while in private practice. After two years in private practice, he returned to the State Appellate Public Defender's Office and was promoted to Chief of the Appellate Unit. In July of 2016, he became the interim State Appellate Public Defender upon the resignation of Sara Thomas, and was appointed to the titled position in November. Mr. Fredericksen earned his law degree from the University of Idaho College of Law.

### Commissioner Shellee Daniels, Idaho Association of Counties

*Represents the Idaho Association of Counties, appointed by the Governor (Term: October 2016 – June 2017)*

Commissioner Daniels is serving her 2<sup>nd</sup> term as an Oneida County Commissioner, the first woman to be elected to the position in that county. Prior to

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## Commission Members Continued ...

being elected Commissioner, Ms. Daniels served in various departments for the State of Idaho including the Juvenile Justice Commission, the Office on Aging, and the Idaho State Police before relocating with her family to Malad City to farm and ranch. Commissioner Daniels earned her bachelor's degree in Political Science and Public Administration from Boise State University. While attending the University, Commissioner Daniels served as a legislative intern to Governor Andrus and helped manage his Ada County re-election campaign.



### Justice Linda Copple Trout (Retired), Idaho Supreme Court

*Represents the Idaho Supreme Court, appointed by the Chief Justice of the Idaho Supreme Court (Term: July 2016 – June 2018, member since January 2016)*

Justice Trout is a former Chief Justice of the Idaho Supreme Court, the only female to hold that position. Since her retirement she has continued to serve the courts as a retired judge. She sat on the Supreme Court for 15 years, serving eight of those as the Chief Justice. Prior to her Supreme Court appointment, Justice Trout served as a Magistrate Judge in the Second Judicial District after being in private practice in Lewiston for six years. Justice Trout earned her bachelor's degree from the University of Idaho in Moscow and a law degree from the University of Idaho College of Law.

### William H. Wellman, Defending Attorney

*Defending attorney, appointed by the Governor (Term: July 2014 – June 2017)*

Mr. Wellman is a criminal defense and family law attorney, practicing for more than 35 years. He currently serves as the Owyhee County Public Defender and the Special Deputy Attorney General for Child Support Enforcement. Prior to that, Mr. Wellman was a Canyon County Deputy Prosecuting Attorney and a Nampa City Prosecuting Attorney. From 2011 to 2014, Mr. Wellman served as the Idaho State Bar Commissioner for Districts 3 and 5, serving as President of the Bar from 2013 until 2014. He was also the director and officer of OGSBAD, INC., a local non-profit youth services agency. Mr. Wellman earned his bachelor's degree in Political Science from Miami University and received a law degree from West Virginia University College of Law.

### Senator Chuck Winder, Idaho Senate

*Represents the Idaho Senate, appointed by President Pro Tempore (Term: January 2015 – November 2016, member since July 2014)*

Senator Winder is currently serving in his third term as Senator for District 20, representing east Meridian and west Boise. He is the Idaho Senate Assistant Majority Leader and is active on Transportation and State Affairs Committees. Senator Winder served in the U.S. Navy, and the inactive reserve, as a Naval Aviator. Upon his return, he was employed by Morrison-Knudsen Company and Emkay Development Company serving as Vice President. Senator Winder and his wife started The Winder Company, a commercial real estate brokerage they successfully ran for 29 years until it merged with Lee & Associates. Shortly after the merger, Senator Winder joined Grubb & Ellis,

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## Commission Members Continued ...

where he served as Senior Vice President. Cushman and Wakefield Commerce acquired Grubb & Ellis where he currently serves as the Director. Senator Winder earned a bachelor's degree in Political Science and Pre-Law from the College of Idaho.

### FORMER MEMBERS

#### Judge Molly Huskey, Idaho Supreme Court

*Represented the Idaho Supreme Court, appointed by the Chief Justice of the Idaho Supreme Court (Term: July 2014 – December 2015)*

Judge Huskey currently serves on the Idaho Court of Appeals. Prior to her appointment, she served as a District Judge in the Third Judicial District. She was a public defender and a prosecutor in Bonneville County before joining the newly-created Office of the State Appellate Public Defender (SAPD) in 1998. She became the Chief of the Appellate Unit a year later, then served as the State Appellate Public Defender for nine years before being appointed to the District Court bench. Judge Huskey earned a bachelor's degree in Public Relations from the University of Idaho in Moscow and a law degree from the University of Idaho College of Law.

#### Sara B. Thomas, Esq., State Appellate Public Defender

*Represented the Office State Appellate Public Defender, appointed by the Governor (Term: July 2014 – June 2016)*

Ms. Thomas currently serves as the Administrative Director of the Courts. During her time on the commission, Ms. Thomas was the State Appellate Public Defender. Prior to that she held the position of Chief of the Appellate Unit within that Office. She previously was a staff attorney with that unit for three years, and before that was a law clerk for Idaho Court of Appeals Judge Alan Schwartzman. Ms. Thomas was appointed as Chair of the Idaho Criminal Justice Commission in 2013, and serves as co-chair of the National Association for Public Defense Amicus Committee. Ms. Thomas earned a bachelor's degree in Criminal Justice Administration from Boise State University and a law degree from the University of Idaho College of Law.

#### Commissioner Kimber Ricks, Idaho Association of Counties

*Represented the Idaho Association of Counties, appointed by the Governor (Term: July 2014 – September 2016)*

Commissioner Ricks is in his 11th year of service as a Madison County Commissioner. He is a retired CPA, having spent forty years in fund raising, public accounting and teaching. Commissioner Ricks received his education at Ricks College, Idaho State University and the University of Utah.



## 2016 Staff

### **Executive Director**

Kimberly Simmons came to the PDC from the Canyon County Public Defender's office, where she served as a senior trial attorney, handling felony cases. Prior to her tenure in the newly opened County office in Canyon, she served as a trial attorney in the Ada County Public Defender's office for eight years, after serving three years as a capital litigation attorney in the State Appellate Public Defender's office. Ms. Simmons has served on the Board of the Idaho Association of Criminal Defense Lawyers for several years and was responsible for the organization's newsletter for more than five years. She instituted free, monthly, in-house CLE's at the Ada County Public Defender's office, and because of her leadership skills and desire to promote justice, she was appointed to the Sexual Offender Management Board (SOMB) in 2013, where she continues to serve. Through that appointment, she participated in the creation of new standards and certification procedures for psychosexual evaluators and treatment providers, many of which have already been implemented. She has experience and familiarity with the negotiated rulemaking process and drafting administrative rules and regulations through her service on the SOMB. As a career public defender, Ms. Simmons brings not only the experience and knowledge required for the position, but also a strong dedication and passion for improving the indigent defense delivery system in Idaho. Ms. Simmons began her employment as Executive Director on May 9, 2016.



### **Deputy Director**

Kelly Jennings began working with the PDC in August of 2016. She previously served as the charter coordinator of the Ada County Mental Health Court, where she oversaw all aspects of program and policy development and administration of a multi-disciplinary, multi-agency team for over ten years. Ms. Jennings actively participated on the Idaho Supreme Court



## Staff Continued ...

committee that developed statewide standards for Idaho's Mental Health Courts. She is a past president and former board member of the Idaho affiliate of the National Alliance on Mental Illness. Ms. Jennings earned her bachelor's degree in American Studies from California State University, Fullerton, and her Master of Public Administration from Boise State University.

### **Research Analyst** (*temporary position*)

Andrew Masser came to the PDC after briefly practicing as a public defender and private criminal defense attorney. His passion for improving public defense stems from the empathy he feels for criminal defendants. Mr. Masser's primary role at the Commission is to conduct research into issues affecting indigent defense and he will play a large role in the workload study the Commission hopes to conduct in 2017. He attended Pomona College, where he received a Bachelor's degree in Philosophy, and UC Davis School of Law, where he earned his Juris Doctorate. Mr. Masser began working as the Research Analyst at the Commission in October of 2016, after a two-month part-time internship demonstrated his outstanding skills in legal research, writing, and policy analysis.



### **Office Manager**

Nichole Devaney currently serves as the Office Manager for the PDC, providing office administration, public relations, clerical and financial support. Ms. Devaney is also responsible for preparing and coordinating Commission meetings, special projects, training seminars, and organizing materials for use in reports, communications and day-to-day activities. Prior to joining the PDC staff, she was a Commercial Office Building Property Manager for over ten years, responsible for the operation and maintenance of multi-tenanted office buildings in Washington, DC. Ms. Devaney joined the PDC in November of 2014.



## 2016 Meetings and Activity

The Commission has, on average, met monthly since its creation in the fall of 2014. With the resignation of Mr. Ian Thomson in the fall of 2015, the Commission began the year without an Executive Director. Despite the absence of an Executive Director, the Commission continued its work on improving trial-level indigent defense as tasked by the legislature. The Commission had just approved a uniform annual reporting form and a Model Contracts document when 2016 began. In early 2016, draft legislation was proposed to greatly expand the powers and responsibilities of the Commission, including the authority to distribute funding to counties to offset future increased costs of public defense. The Idaho Public Defense Reform Interim Committee<sup>1</sup> wrote the legislation and sought the advice and judgment of the Commission on the draft legislation. In the early stages of 2016, the Commission thoroughly reviewed and vetted the draft legislation.

The next step for the Commission was to hire a new Executive Director, pursuant to Idaho Code §19-850(2)(a). The position was posted locally and nationwide in the early part of 2016, with interviews conducted during the Commission meeting in late April 2016. Kimberly Simmons was selected as the agency's Executive Director going forward. Ms. Simmons began her work May 9, 2016. During this time, the Commission continued its discussion and creation of a temporary rule addressing the use of the \$110,000 of appropriated training funds, creation of a draft application for the \$4.2 million appropriated for Indigent Defense Grants, and the planning and hosting of a training program for defending attorneys on the topic of immigration consequences of criminal convictions.

In the initial months after her hiring, Ms. Simmons focused her efforts on establishing a list of priorities for the Commission, meeting face-to-face with stakeholders around the State, and preparing the counties for the first round of Indigent Defense Grant Applications. By August 1, 2016, the Commission had received 43 applications for Indigent Defense Grants.<sup>2</sup> In September, the Commission approved all 43 applications and distributed funds to the Counties by October 1, 2016, as required by the statute.

The Commission continued to work on its directives by prioritizing the standards for rule promulgation. Ultimately, the Com-

*(Continued on page 12)*



## Meetings and Activity Continued ...

mission chose to focus on initial appearances, caseload standards and performance standards for defending attorneys. This decision was based upon Idaho's needs, conversations with nationally-recognized experts in public defense reform and ACLU priorities.<sup>3</sup> After engaging in the negotiated rulemaking process and holding several public hearings throughout the State, the Commission submitted a pending rule for legislative review that included guidelines regarding caseloads, a requirement that a defending attorney be available for initial appearances in all counties, and general performance standards for defending attorneys that includes an annual continuing legal education requirement.

The Commission met for open meetings nineteen (19) times in 2016. The minutes from these meetings are available on the Commission's [website](#) with highlights outlined below.

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<sup>1</sup>The Idaho Public Defense Reform Interim Committee was charged with undertaking and completing a study of potential approaches to public defense reform. The Committee was created in 2013 after a 2010 NLADA report deemed Idaho's indigent defense delivery system deficient.

<sup>2</sup>Benewah County was the only county that did not apply for a grant.

<sup>3</sup>The ACLU sued the State of Idaho in 2015, claiming deficiencies in these areas. Further, Ms. Simmons consults regularly with ACLU staff to gain insight into their priorities for Idaho in an effort to avoid further lawsuits being filed.

### **January 5, 2016**

*Meeting conducted at the JRW Building, East Conference Room*

Presentation by Judge Bryan Murray on High Quality Representation in Child Welfare Cases

Discussion on Interim Committee Meeting Legislation: biggest hurdle is the enforcement mechanism

### **January 19, 2016**

*Meeting conducted at Len B. Jordan Building, Conference Room B-09*

Election of Commission Officers – elected a new chair and vice-chair

Review Interim Committee's Proposed Legislation: House Bill 504

### **February 19, 2016**

*Meeting conducted at Len B. Jordan Building, Conference Room B-09*

Review of House Bill 504

Discussion on Temporary/Proposed Training Rule

Discussion regarding the hiring of an Executive Director

*(Continued on page 13)*

## Meetings and Activity Continued ...

### **March 15, 2016**

*Meeting conducted at Len B. Jordan Building, Conference Room B-09*

Negotiated Rulemaking Training  
Executive Director Posting – discussion regarding distribution  
Further Discussion on Temporary Training Rule  
Discussion regarding the need for additional office space as the staff grows pursuant to House Bill 504

### **April 5, 2016**

*Meeting conducted at Borah Building, 4<sup>th</sup> Floor Conference Room*

Discussion regarding interviewing candidates for the Executive Director position  
Further discussion regarding office space  
Legislation and the Effect of House Bill 504  
Timeline for Negotiated Rulemaking addressed

### **April 14, 2016**

*Meeting conducted at Len B. Jordan Building, Conference Room B-09*

Interviews held: Candidates for the Executive Director Position

### **April 28, 2016**

*Meeting conducted at Len B. Jordan Building, Conference Room B-09*

Executive Session held to discuss candidates for the Executive Director Position  
In open session, Kimberly Simmons was selected for the Executive Director Position

### **May 3, 2016**

*Meeting conducted at Borah Building, 4<sup>th</sup> Floor Conference Room*

Discussion regarding draft Indigent Defense Grant Application  
Discussion regarding Temporary Rule for Administration of Training funds allotted for education of defending attorneys  
Decision to host training on Immigration Consequences of Criminal Convictions

### **May 11, 2016**

*Meeting conducted at Borah Building, 4<sup>th</sup> Floor Conference Room*

Discussion with new Executive Director, Kimberly Simmons, regarding duties and expectations of the position  
Discussion regarding other staff positions and duties

### **May 31, 2016**

*Meeting conducted at Len B. Jordan Building, Conference Room B-09*

Executive Director presented a report of priorities and tasks for staff and

*(Continued on page 14)*



## Meetings and Activity Continued ...

commission members

Discussion regarding annual reporting and the need to create a uniform reporting form

Further discussion regarding the draft Indigent Defense Grant Application  
Executive Director would like to hire a Deputy Director by July 1, 2016

The Commission will move forward with temporary training rules regarding the administration of training funds

Training for defending attorneys planning session

### **June 21, 2016**

*Meeting conducted at PDC Office – new conference meeting space*

Executive Director authorized to post the Deputy Director position

Further discussion on draft Indigent Defense Grant Application

Executive Director authorized to submit temporary Training Rules for publication

Introduction to the topic of “Extraordinary Litigation Costs” as described in Idaho Code §19-850(2)(e)

### **July 1, 2016**

*Conference Call & Open meeting conducted at PDC Office*

Approval of FY2017 Indigent Defense Grant Application

Approval of FY2017 Strategic Plan

Commission Member Sara Thomas accepted position as Administrator of the Courts. She may no longer be on the Commission. To be determined.

Discussion and clarification regarding additional grant funding available to Counties who join together to provide indigent defense services through an in-house joint office

### **July 14, 2016**

*Meeting conducted at PDC Office*

Summary of selected candidates for the Deputy Director position

Executive Director report on first visit to counties to meet with stakeholders

Continued discussion regarding training funds and definition of “extraordinary litigation”

Initial discussion regarding prioritizing which standards to promulgate this year – presentation by ACLU

### **August 2, 2016**

*Meeting conducted at PDC Office*

Executive Director report on continued visits to counties

Initial draft of Proposed Rule incorporating standards discussed

43 Indigent Defense Grant Applications received

*(Continued on page 15)*

## Meetings and Activity Continued ...

### **August 30, 2016**

#### *Meeting conducted at PDC Office*

- FY2016 Performance Report and FY2018 Proposed Budget Approved by the Commission
- 43 Indigent Defense Grant Applications reviewed and approved for funding
- Approval of Proposed Rule incorporating standards after some amendments based upon comments received from stakeholders and nationally-recognized experts in the subject matter

### **September 19, 2016**

#### *Meeting conducted at PDC Office*

- In-depth discussion regarding formula used for grant award calculations. Decision made to use prospective local share amounts in order to award grant funding
- ED Simmons subpoenaed to testify in capital case. Commission discussed issues surrounding the subpoena.

### **October 4, 2016**

#### *Meeting Conducted at PDC Office*

- Approval of newly created Annual Reporting Form for defending attorneys
- Further discussion regarding the Extraordinary Litigation Fund
- Proposal to amend budget to fund workload study discussed
- Guidance provided to Commission regarding rulemaking priorities
- Commission addressed a potential issue with a county using Indigent Defense Funds improperly. ED Simmons will send communication to all counties regarding proper usage of the funds

### **October 27, 2016**

#### *Conference call hosted at the PDC Office*

- Supplemental Budget request approved to ask legislature for transfer of funds for workload study

### **November 1, 2016**

#### *Meeting Conducted at PDC Office*

- Commission presented a summary of the public hearings (regarding the proposed rule) that were held across the State in all seven Judicial Districts
- In-depth review of all comments received on the proposed rule
- Further discussion regarding the Extraordinary Litigation Fund

### **November 22, 2016**

#### *Meeting Conducted at PDC Office*

- Approval of some amendments made to Pending Training Rule
- Approval of Proposed Rule incorporating standards for defending attorneys. Rule will now be pending and sent to legislature for approval

## Public Defense Commission Training Programs

### FY 2016

**February 4-5, 2016**  
**Child Protection and Termination of  
Parental Rights Conference, Boise**  
30 attendees from 15 counties within all 7  
Judicial Districts  
Approved CLE Hours: 5.75 per attorney

**March 4-5, 2016**  
**Joint IACDL Sun Valley Conference**  
(in collaboration with Idaho  
Association of Criminal Defense Lawyers)  
130 attendees from 28 counties within all  
7 Judicial Districts  
Approved CLE Hours: 10.75 per attorney

**April 15, 2016**  
**Mental Health and Involuntary Civil  
Commitment Conference, Twin Falls**  
33 attendees from 17 counties within all 7  
Judicial Districts  
Approved CLE Hours: 6 per attorney

**May 27, 2016**  
**Immigration Consequences of Criminal  
Convictions, Boise**  
31 attendees from 11 counties in 6 Judi-  
cial Districts  
Approved CLE Hours: 6 per attorney

### FY 2017

**September 15-16, 2016**  
**Federal Defenders Annual Western All-  
Star Conference, Boise**  
(in collaboration with the Federal Defend-  
er Services of Idaho)  
111 attendees from 28 counties within all  
7 Judicial Districts  
Approved CLE Hours: 11.75 per attorney

**January 27, 2017**  
**2017 Child Protection Training, Boise**  
Anticipated attendees: 40  
Approx. CLE Hours: 6.5

**March 10-11, 2017**  
**Joint IACDL Sun Valley Conference**  
(in collaboration with the Idaho  
Association of Criminal Defense Lawyers)  
Anticipated attendees: 130  
Approx. CLE Hours: 12

### FY 2018

**Tentative—August 9-12, 2017**  
**Public Defender Summit and Trial School**  
Anticipated attendees: 150+  
Approx. CLE Hours: 15+

## Training for Defending Attorneys

The Public Defense Commission has been tasked with providing continuing legal education programs for the state's indigent defense services providers, a task the Commission takes very seriously. In 2016, the Commission sponsored five different training programs on its own and jointly with organizations such as the Idaho Association of Criminal Defense Lawyers and the Federal Defender Services of Idaho. The trainings included areas of practice such as child protection and termination of parental rights, trial skills, mental health and involuntary civil commitment, and immigration. Across the five trainings, 335 participants represented 40 of 44 counties and the SAPD. The Commission also provided scholarships to assist attorneys and investigators to attend nationally recognized training programs. \$4,500 in scholarships were awarded for these individuals to attend programs that would not otherwise be available to Idaho providers. The legislature allocated \$110,000 for the PDC to provide these trainings. In fiscal year 2016, \$92,552 was expensed on training programs. The PDC plans to host at least four training programs in fiscal year 2017, including a child protection training in January, partnering again with IACDL for a seminar in Sun Valley in March, a DUI program in May and a public defender summit in August.

## Collaborating with Idaho's Counties

During the Summer and Fall of 2016, Executive Director Kimberly Simmons traveled across Idaho, meeting with representatives from 39 of Idaho's 44 counties. These meetings were an invaluable method of establishing communication and building rapport with indigent defense stakeholders around the state. As a result, similar meetings will take place in the Spring of 2017.

Ms. Simmons introduced herself as the new Executive Director for the Commission and reviewed the newly enacted portions of the statute that arose from House Bill 504, giving the Commission expanded powers and duties. Ms. Simmons reports many successful exchanges in which the various stakehold-

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## Collaboration Continued ...

ers were given opportunities to ask questions and express their thoughts regarding the new responsibilities of the Commission. Topics that arose repeatedly include, but are not limited to:

- Requirements for receiving an Indigent Defense Grant
- The feasibility of having defending attorneys at initial appearances
- Opinions that indigent defense services should be provided by the state rather than the counties
- Desire to see case weighting and an Idaho workload study before caseload standards are implemented
- Concerns about the permanence of Indigent Defense Grant funding
- Desire to have “extraordinary litigation costs” defined
- Desire to see uniform eligibility requirements for appointment of a defending attorney
- Concerns surrounding the ever-increasing costs for providing indigent defense services

In addition to these county-by-county meetings, the Commission also held a public meeting in each of the seven judicial districts during the negotiated rulemaking process related to the proposed standards for public defenders. County commissioners, public defenders and members of the public all offered valuable input during these public meetings. As a result of input from the meetings, as well as written comments from various stakeholders, significant changes were made to the proposed standards. Most notably, the Commission decided to forego a specific caseload standard this year until an Idaho workload study can be completed.

Both rounds of meetings demonstrate the Commission’s commitment to open dialogue with all stakeholders interested in the Commission’s work. The Commission believes that open, accessible channels of communication greatly increase its ability to achieve its goal of improving Idaho’s indigent defense delivery system. The Commission anticipates this first year of meetings has fostered a strong base for long-term, collaborative relationships with Idaho’s counties and the individuals in those counties who commit themselves to public service. Moving forward, the Commission will continue to treat as paramount the need for extensive communication with Idaho’s counties and public defenders.

*(Continued on page 18)*



### Additional Comments from around the State

- Appreciation for the trainings put on by the Commission
- Problems with adequate meeting space for defending attorneys to meet privately with clients
- Concerns expressed by a county commissioner that they are not the appropriate people to oversee a public defense system
- Desire for a mentoring program for public defenders
- The lack of funding for investigators and experts
- Desire for a county clerk to be on the Commission
- The appointment of defending attorneys in non-criminal cases
- How will the Commission enforce standards?
- Questions about the requirement for written contracts
- Concerns surrounding time and case tracking
- Use of grant funds for interpreters and immigration consultation
- Concerns about the use of “should” vs. “shall” in standards
- Concerns regarding public defender reimbursement ordered by the Court
- Concerns about the number of public defenders to cover child protection cases
- Questions about establishing a joint in-house public defender’s office
- The increasing number of criminal cases involving heroin
- Desire to have an in-house social worker
- Justice Funds are at their limits

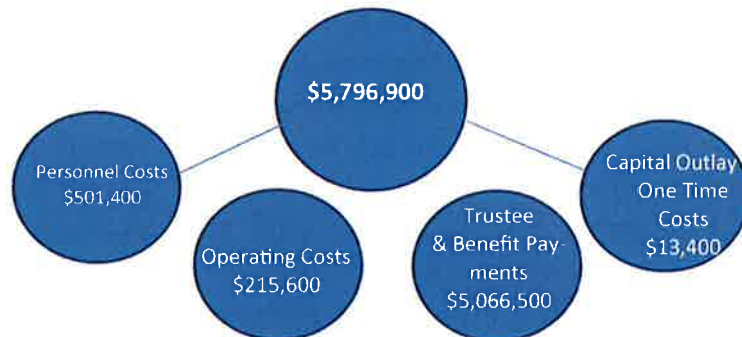
## Collaboration Continued ...

*(Continued from page 17)*

A summary of all comments received can be found on the Commission's website: <https://pdc.idaho.gov/rules/negotiated-rulemaking/>.

## Budget Summary

With the passing of House Bills 578 and 609, the Appropriations Committee appropriated additional monies to be allocated to the Public Defense Commission (PDC) for fiscal year 2017 and authorized an additional 4.5 full-time equivalent positions. The amounts were expended according to the designated expense classes from the General Fund as follows:



As a result of the additional full-time positions afforded by House Bill 609, the PDC needed to expand its office. Fortunately, the suite next door was available. In June of 2016, the Commission signed an amended lease to expand the office, more than doubling its original size. With the increase in square footage, the office now accommodates a conference room where commission meetings can be held, a copy/storage room, a reception area and three offices. The expansion occurred at the end of FY 2016 and much of the cost to furnish the space was expended using personnel cost savings. Those costs are broken down as follows: Furniture and services such as painting and cable installation totaled \$16,249.24 and \$7,987.52 in computer equipment.



## Budget Summary Continued ...

A detailed listing of all FY 2017 expenditures through November 30, 2016 is below:

	FY2016	FY 2017			
	Actual Expenditures	Legislative Appropriations	Actual Expenses July - Nov.	Total Projected Expenditures for FY2017	Possible Remainder
<b>Salary &amp; Benefits</b>	<b>56,721</b>	<b>501,400</b>	<b>82,914</b>	<b>391,066</b>	<b>110,334</b>
Communication Costs	1,334		970	3,982	
Employee Development	19,761		1,085	1,085	
General Services	15,808		6,012	17,962	
Professional Services	3,666		2,385	5,585	
Repair & Maint Svcs	1,030		1,209	1,609	
Administrative Services	1,490		754	1,779	
Computer Services	1,133		3,372	3,372	
Employee Travel Costs	6,091		12,262	15,662	
Administrative Supplies	2,498		1,657	2,307	
Fuel & Lubricants Costs	-		262	262	
MFG & Merch Costs	-		-	-	
Computer Supplies	3,277		833	1,133	
Repair & Maint Supplies	53		92	92	
Inst & Resident Supplies	-		-	-	
Specific Use Supplies	-		-	-	
Insurance	-		744	744	
Utility Charges	-		-	-	
Rentals & Oper Leases	15,577		11,222	31,581	
Misc Expenditures	58,258		24,939	104,939	
<b>Total Operating Costs</b>	<b>129,978</b>	<b>216,600</b>	<b>67,799</b>	<b>192,094</b>	<b>23,506</b>
Capital Outlay	19,325	13,400	2,028	12,028	1,372
<b>Trustee &amp; Benefit Payments</b>	<b>-</b>	<b>6,066,500</b>	<b>3,819,347</b>	<b>3,919,347</b>	<b>1,147,153</b>
ID Grant Awards		4,266,500	3,819,347		447,153
Merger Incentive		550,000	100,000		450,000
Tech Assist/Extraordinary		250,000			250,000

### Indigent Defense Grant Program

The Commission disbursed \$3.8 million in Indigent Defense Grants (IDG) to 43 of the 44 Idaho counties pursuant to Idaho Code §19-862A. Grants can be awarded annually to eligible counties. Award amounts are determined by calculating 15% of the county's local share for the fiscal year or \$25,000.00, whichever is greater. A county's local share is defined as the median of the annual amount in county funds expended by that county for indigent defense during each of the first three (3) of the preceding five (5) county fiscal years.

The Commission also disbursed \$100,000 in Merger Incentive Grants to 4 of the 44 counties. Merger Incentive Grants are awarded to counties who elect to join with one or more other counties within the same judicial district to establish and maintain a joint office of public defender. Each participating county is eligible for \$25,000 over their IDG award amount.

## First Set of Indigent Defense Standards

In 2016, the legislature passed House Bill 504, which exponentially increased the powers and responsibilities of the Public Defense Commission. Idaho Code §19-850 instructs the PDC to promulgate rules in seven different areas: (1) training and continuing legal education requirements for defending attorneys, (2) uniform data reporting requirements and model forms, (3) model contracts and core requirements for contracts, (4) procedures and forms for Indigent Defense Grants, (5) procedures for administrative review, (6) procedures for oversight, implementation, enforcement, and modification of indigent defense standards, and (7) standards for defending attorneys.

In an effort to implement rules in stages so as to not

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*The PDC is proud to continue the work of improving Idaho's indigent defense system in a collaborative manner with all of Idaho's criminal justice stakeholders who take on the important responsibility of providing constitutionally-sound representation for indigent defendants.*

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overburden the counties and defending attorneys, the PDC chose to propose a rule in one topic area: standards for defending attorneys. This section was chosen based upon the concerns raised in the recent ACLU lawsuit filed against the State. In order to create these standards, the PDC collaborated with Idaho's counties and defending attorneys in order to come up with standards that would meet the needs of the counties, defending attorneys and their clients. The proposed standards address defending attorneys' workloads, experience, presence at defendants' first appearance in court and continuing legal education. These standards will be reviewed, and approved or rejected, by the Idaho Legislature during the 2017 legislative session.

For this year's round of standards, the Commission chose to focus on five areas: workload of defending attorneys, defending attorneys' abilities, training and experience, representation at a defendant's first appearance in court, vertical representation and continuing legal education. On workload, the Commission received significant input from stakeholders and deter-

*(Continued on page 21)*

## Standards Continued ...

mined that it would not set a specific caseload maximum in the absence of Idaho-specific data. However, a defending attorney's workload should not be so high that it makes it impossible to give each client's case the time it deserves.

Regarding a defending attorney's abilities, training and experience, the Commission has created a number of provisions requiring defending attorneys to be familiar with the relevant law and other aspects of being a defending attorney. Additionally, defending attorneys are encouraged to take only cases that they are experienced enough to handle.

The Commission is particularly excited to see the implementation of its standard requiring representation of all indigent defendants at their first appearance in court. The hope is that all defendants will have the opportunity to consult an attorney before pleading guilty. Additionally, this requirement should increase a defendant's chances of being released on bail rather than having Idaho's taxpayers bear the burden of incarcerating the defendant pending resolution of their case.

The vertical representation provision requires that the same attorney handle a defendant's case from start to finish. This will ensure that indigent defendants and their lawyers get to know and trust each other, leading to improved representation. Finally, the continuing legal education portion of the proposed standards makes sure that Idaho's defending attorneys will be aware of changes in the law.

As a whole, the proposed standards represent a necessary first step in improving Idaho's indigent defense system. The Commission is extremely grateful to all the individuals and entities, particularly Idaho's counties and defending attorneys, that provided comment or feedback as the rules and standards made their way through the negotiated rulemaking process. The Commission is proud to continue the work of improving Idaho's indigent defense system in a collaborative manner with all of Idaho's criminal justice stakeholders who take on the important responsibility of providing constitutionally-sound representation for indigent defendants.





## Inaugural Indigent Defense Grants

Indigent Defense Grants are a key component of Idaho's reform of its indigent defense system. These grants provide counties additional resources to keep improving their manner of providing public defense. 2016 marks the first year in which state funds have been provided to counties in support of trial-level indigent defense. As part of this process, the Public Defense Commission issued grant applications to allow counties to apply for funding for their indigent defense services. Pursuant to Idaho Code §19-862A, counties are eligible to receive up to \$25,000 or 15% of their indigent defense budget, whichever is greater.

The Commission was extremely pleased about the robust response to its call for grant applications. Of Idaho's 44 counties, 43 submitted grant applications. In their applications, the counties supplied extensive information about their current indigent defense expenses and their proposed plans for how they would use the additional funding. The Commission reviewed each application in detail and each county that applied was ultimately awarded the maximum amount for which it was eligible.

How the counties use their grant funds will depend in part on the type of public defender system each county employs. At the beginning of 2016, seven (7) counties operated independent, in-house, institutional public defender offices. These counties were Ada, Bannock, Bonner, Bonneville, Canyon, Kootenai and Twin Falls counties. By the end of 2016, Gooding County had joined this group. In addition, in 2016, Power and Oneida counties joined together to create an in-house public defender's office, joining Cassia and Minidoka counties as the only other two counties to offer public defender services through a joint office. These four counties received additional grant funds for their joint venture pursuant to statute. The remaining thirty-two (32) counties offer public defender services by contracting with private attorneys or law firms. The counties have a variety of plans for how they will spend their grant funds.

Some counties plan to use their grant funding to increase attorney staffing at their public defender offices, which would go

*(Continued on page 23)*

## Grants Continued ...

far in reducing the crushing caseload that many defending attorneys in Idaho handle. Other counties plan to use their grant funding to remodel their public defender offices or courthouses in order to provide essential private meeting space for meetings between defending attorneys and their clients. One county plans to use their grant funds to support services that the public defender's office might otherwise not be able to utilize, such as an immigration consultant to advise about cases where the defending attorney's client is not a United States citizen. Many counties also proposed using their grant funds to increase the budget for their conflict defending attorneys, who handle cases when the main defending attorney has a conflict of interest. In short, counties across the state are using their grant funds in a variety of ways, but all in furtherance of an improved public defense system.

In reviewing the applications for Indigent Defense Grants, the Commission was cognizant of the need to get funds into the hands of the counties. Because there were no public defense standards in place at the time of the grant applications, the counties were only required to spend the funds on public defense, rather than on specific efforts to meet standards that did not yet exist. In the future, counties will be required to have a plan to meet the indigent defense standards in effect at the time of the grant application. Such a plan will likely require the counties to devote grant funds to meeting such standards. However, the Commission is committed to providing the counties the leeway necessary to spur innovation. Different counties face different situations and as a result the best use of grant funds may vary from county to county. Local control is a key component to Idaho's indigent defense reform and, more generally, Idaho's ethos. The oversight of the Indigent Defense Grants will keep this foundational principle at the forefront, allowing counties the freedom to use their grant funds as they see fit, so long as that use is consistent with the statutory directive to spend the money on improving indigent defense.



## Recommendations

Pursuant to Idaho Code §19-850(1)(b), the PDC makes the following recommendations for improvements of the public defense system and further legislative action:

- That the legislature fully fund Indigent Defense Grants pursuant to Idaho Code §19-862A to assist with compliance of the first set of standards for indigent defense delivery systems.
- That the legislature approve the request for an object transfer of funds so the PDC can conduct a workload study and collect Idaho-specific data on the caseloads of its defending attorneys.
- The Commission asks the legislature to provide guidance regarding the following issues:
  1. The addition of the PDC to agencies exempt pursuant to Idaho Code §74-124(1)(b).
  2. Additional state monies for discretionary grants such as the Extraordinary Litigation Fund
  3. Recalculation of Local Share as defined by Idaho Code §19-862A to increase the amount for which counties are eligible
  4. The possibility of additional monies to offset the costs of increased budgets due to the banning of fixed-fee contracts
  5. Additional members of the Commission to increase representation from rural areas

## Looking Ahead ...

- The PDC anticipates partnering with Boise State University's Idaho Policy Institute (IPI) to conduct a weighted caseload study regarding trial-level indigent defense cases to determine guidelines for establishing a maximum allowable caseload for Idaho defending attorneys. Such a maximum allowable caseload would ensure that attorneys can give each indigent defendant the time and effort necessary to provide

## Looking Ahead ...

effective representation as required by the Sixth Amendment to the U.S. Constitution. The research will likely consist of a timekeeping component to determine how much time is currently being spent on different types and levels of cases and guided expert decision-making to determine how much time should be spent on cases with the goal of establishing recommended caseload limits. The study will be conducted in 2017, with the goal of having results in under 12-months. The PDC will work with IPI to document the current amount of time attorneys spend on cases in an effort to develop yearly caseload recommendations for the state of Idaho.

- The PDC will continue to prioritize and establish standards as directed in Idaho Code §19-850(1)(a) with potential focus areas on enforcement and oversight, procedures for Indigent Defense Grants, and additional standards as guided by Idaho's Principles of an Indigent Defense Delivery System (IPIDDS) in I.C. §19-850(1)(a)(vii).
- In 2017, the PDC will focus on educating stakeholders on the importance of its mission and vision statements and maintaining effective working relationships with the counties and the state. Currently, staff at the PDC plan to present to the Idaho Association of Counties on the day-to-day life of a defending attorney and the resources necessary to deliver effective representation.
- Training Idaho's defending attorneys will continue to be a priority for the PDC. The PDC currently has plans for at least three different training programs in 2017.
- The PDC recently created a subcommittee to continue working on the definition of "extraordinary litigation costs" pursuant to Idaho Code §19-850(2)(e). The subcommittee will make recommendations to the PDC on a definition as well as procedures for defending attorneys to apply for monies from the Extraordinary Litigation Fund (ELF). The legislature has appropriated \$250,000 for this purpose, and the PDC hopes to distribute those monies based upon applications in early 2017.
- The PDC will continue to develop internal policies regarding agency procedures.



#### MISSION STATEMENT

The Idaho Public Defense Commission is committed to improving the delivery of trial-level indigent defense services by serving the Counties and Indigent Defense Providers of Idaho. We strive to ensure that the safeguards of the 6<sup>th</sup> Amendment to the United States Constitution and Article I, Sect. 13 of the State Constitution are met. We will collect data, support compliance with standards, provide training, and administer grants to achieve fair and just representation of the accused. In the words of Thomas Jefferson, "The price of freedom is eternal vigilance."

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## Idaho Indigent Defense Expenditures



Information on county expenditures on indigent defense were collected in 2016 through Indigent Defense Grant Applications. 43 of 44 counties submitted applications, the collective information is included in the figure above. As shown, expenditures on indigent defense have consistently increased over the last five (county) fiscal years, and are forecasted to continue to increase as the PDC establishes standards to improve the delivery of indigent defense services.